

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 656 of 1997

with

CIVIL APPLICATION NO. 5892 OF 1997

in

SPECIAL CIVIL APPLICATION No 9717 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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BP ITARA

Versus

GUJARAT PUBLIC SERVICE COMM.  
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Appearance:

MR PARESH UPADHYAY for Petitioner

MR RJ OZA for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2, 3  
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CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and

MR.JUSTICE M.S.SHAH

Date of decision: 19/11/97

ORAL JUDGEMENT (Per: K.Sreedharan CJ):

Petitioner in Special Civil Application No.9717 of 1996 is the appellant. He is aggrieved by the dismissal of his petition by the learned single Judge as per judgment dated 8-5-1997.

Short facts necessary for the disposal of this appeal are as follows:

The Gujarat Public Service Commission (hereinafter referred to as the GPSC ) invited applications for recruitment to the post of District Tuberculosis Officer. The educational qualification prescribed for the post was (i) M.B.B.S.Degree of a statutory University in Gujarat and (ii) Diploma in Tuberculosis disease or a diploma in Public Health.

The petitioner after taking his MBBS degree did Post Graduation in Preventive and Social Medicine and secured the degree of M.D.(PSM). He applied for the post advertised. His application was rejected on the ground that he was not having Diploma in Public Health. The petitioner challenged this action of the GPSC in Special Civil Application No.9717 of 1996.

On behalf of the GPSC it was contended before the learned single Judge that the rules governing the recruitment to the post of the District Tuberculosis Officer prescribe qualification of Diploma in Tuberculosis disease or Diploma in Public Health. In view of this specific rule candidate who is not having that qualification is not entitled to apply for the post. The learned single Judge found the said argument to be legal and acceptable. Hence this Letters Patent Appeal.

GPSC in their affidavit-in-reply stated that for being eligible for appointment by direct selection a candidate must possess (1) MBBS Degree of a statutory University in Gujarat or any other equivalent qualification specified in the First or Second Schedule to the Indian Medical Council Act,1956 and (2) Diploma in Tuberculosis Disease or a Diploma in Public Health. The above qualification is essential eligibility fixed as per the rules. In other words, it is the minimum qualifications which makes a candidate eligible for applying to the post, the minimum qualification being Diploma in Tuberculosis disease or Diploma in Public health. When the minimum qualification is diploma in Public Health, Postgraduate degree in Public Health can certainly be considered a higher qualification and not a disqualification. If a degree holder in Civil Engineering applies for the post for which the minimum

qualification is diploma in Civil Engineering, the applications of the degree holders cannot be considered as not maintainable on the ground that he is not qualified. Likewise when the minimum qualification for the post was Diploma in Public Health, Post Graduate Degree in Public Health cannot be considered as a disqualification. Candidate with post graduate degree should necessarily be a candidate qualified for the post.

Applications were invited for filling up the post of District Tuberculosis Officer. The post of Assistant Director of Public Health is its promotional post. The post of Assistant Director can be filled up by promotion from the cadre of District Tuberculosis Officers and by direct recruitment. The qualification for direct recruitment as per the rules is post graduate degree in any branch of Medicine or degree or diploma in Public Health or Hygiene or Sanitary Service or Preventive and Social Medicine of a recognized university. This means that post graduate degree in Preventive and Social Medicine is a qualification essential for direct recruitment to the post of Assistant Director in Health Services. Post of Deputy Director is a promotional post from the post of Assistant Director in Public Health. Direct recruitment is also envisaged to fill up the vacancies in the cadre of Deputy Directors. The qualification for the post of Deputy Director as per the service rules is degree in Medicine with a post graduate degree in Preventive and Social Medicine or Diploma in Public Health or Hygiene.

The service rules do show that for the higher posts of Assistant Director and Deputy Director, post graduate degree in Preventive and Social Medicine is recognized by the rules. In these circumstances we do not find any justification in the stand taken by the GPSC that the petitioner with post graduate degree in Preventive and Social Medicine is ineligible to apply for the post of District Tuberculosis Officer on the ground that he is not having diploma in Public Health.

Since the recruitment rules lay down only the essential qualifications for the post higher qualification held by the petitioner cannot disqualify him from contesting for the post. The view expressed by the learned single Judge, we afraid, cannot be sustained.

This Letters Patent Appeal is allowed and the GPSC is directed to treat the petitioner as having qualification for the post of District Tuberculosis Officer.

By virtue of the interim order passed by this Court, we are told, the GPSC considered the claim of the petitioner for the post of District Tuberculosis Officer and the result has been kept in a sealed cover. The GPSC is directed to open the sealed cover and publish the result of the petitioner on the basis of the interview and the examination conducted by the Commission. This must be done within two weeks from the date of receipt of a copy of this judgment. The petitioner is directed to make available copy of this judgment to the GPSC for enabling them to carry out the directions of this Court.

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Sharma